

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of Singh <i>et al.</i>	}	
	}	
Application No.: 10/631,029	}	
	}	
U.S. Patent No.: 7,517,886	}	Confirmation No.: 3056
	}	
Filing Date: July 29, 2003	}	
(Or 371(c) Date)	}	Group Art Unit: 1614
	}	
Examiner: Henley III, Raymond J.	}	
	}	
Entitled: Methods Of Treating Or Preventing	}	
Autoimmune Diseases With 2,4-Pyrimidinediamine	}	
Compounds	}	

**PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FILED
UNDER 37 C.F.R. § 1.705(d)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The patentee petitions for adjustment of the Patent Term Adjustment (“PTA”) of this patent. The patent submits that adjustments under 35 U.S.C. § 154(b)(1)(A) and 35 U.S.C. § 154(b)(1)(B) have not been accorded this patent. As a result, the patentee is being denied a portion of patent term to which it was entitled. Specifically, the patentee submits it is entitled to 1104 days of Patent Term Adjustment, not 740 days of Patent Term Adjustment as was calculated by the Patent Office

In *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D.D.C. Sept 30, 2008), the district court held that delays under the provisions of §§ 154(b)(1)(A) and (B) should be added together, with the exception that delay periods under §§ 154(b)(1)(A) and (B) that occur on the same calendar day are counted once, not twice. The PTA of the present patent as calculated by the PTO neglects to include delays under § 154(b)(1)(B).

CERTIFICATE OF TRANSMISSION (37 C.F.R. 1.8)

I hereby certify that this correspondence is being transmitted to the USPTO via the USPTO EFS on June 11, 2009.

Date: June 11, 2009

/Michael S. Greenfield/
Michael S. Greenfield

35 USC § 154(b)(1)(A) provides a one-day extension of patent term for every day that issuance of a patent is delayed by a failure of the PTO to comply with various enumerated statutory deadlines, including, fourteen months for a first office action; four months to respond to a reply; four months to issue a patent after the fee is paid; and the like. 35 U.S.C. § 154(b)(1)(B)) provides a one-day term extension for every day greater than three years after the filing date that it takes for the patent to issue. The Court labeled the periods of delay encompassed by § 154(b)(1)(A) as “A delays” or “A periods,” and the the period that begins after the three-year window has closed as the “B delay” or the “B period.”

The above delays are subject to the limitations of § 154(b)(2)(A), which states that:

To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

The *Wyeth* court construed § 154(b)(2)(B) to mean that “[t]he only way that A and B periods of time can ‘overlap’ is if they occur on the same day.” Thus, when calculating the Patent Term Adjustment, the A and B periods must be added except any A period and B period which occur on the same day.

In the present case, the A period is 735 days for the Office:

1. Issuing a first action under 35 U.S.C. § 132 14 months and 327 days after the ‘029 application was filed, 37 CFR 1.703(a)(1);
2. Issuing a Office Action 4 months and 102 days after Applicants’ Response filed on June 22, 2006, 37 CFR 1.703(a)(2); and
3. Issuing the ‘886 patent 4 months and 306 days after Applicants paid the issue fee, 37 CFR 1.703(a)(6).

The B period is 990 days (from July 30, 2006 until April 14, 2009; 37 CFR 1.703(b)).

Applicants’ delay (37 CFR 1.704) is 250 days for:

1. Filing a response to the Office Action mailed August 22, 2006 at 3 months and 92 days after mailing, 37 CFR 1.704(b);
2. Filing a response to the Office action mailed June 15, 2007 at 3 months and 3 days after mailing, 37 CFR 1.704(b); and

3. Filing an information disclosure statement on June 6, 2007, 90 days after filing a response to an Office Action on March 8, 2007, 37 CFR 1.704(c)(8).

The A and B periods overlap for a total of 371 calendar days:

1. 65 days, for the period of July 30, 2006 (the beginning of the 3-year delay period) until October 2, 2006 (Issuance of first office action on the merits); and
2. 306 days for the period of June 13, 2008 until April 14, 2009 (the delay in issuance of the '886 patent after payment of the Issue Fee by Applicants).

Thus, the total delay is $735 + 990 - 250 - 371 = 1104$ days, not 740 days as calculated by the USPTO.

The '886 patent is not subject to a terminal disclaimer.

Conclusion

For all the reasons stated above, Patentees respectfully request the USPTO to recalculate the Patent Term Adjustment and add up the period of total delay under 35 U.S.C. § 154(b)(1)(A) and 35 U.S.C. § 154(b)(1)(B).

Fee Authorization: The Commissioner is authorized to charge the cost of any fees that may be associated with the filing of this Petition to Deposit Account No. 13-2490.

If there are any questions or comments regarding this application, the Office is encouraged to contact the undersigned in order to expedite prosecution.

Respectfully submitted,

Date: June 11, 2009

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